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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **(WESTERN DIVISION)**

16 In re:

17 Bluetooth Headset Products Liability  
18 Litigation

CASE NO. 07-ML-01822 DSF  
MDL No. 1822

**CONSOLIDATED CLASS  
ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs, Michael Jones, Amy Karle, Aleksandra Spevacek, Betty Dumas,  
2 Betsee Finlee, and Lori Raines, ("Plaintiffs"), on their own behalf and as  
3 representatives of a putative class of similarly situated parties, complain and allege on  
4 information and belief as follows:

### 5 INTRODUCTION

6 1. This action arises from the marketing, manufacture, and distribution of  
7 devices commonly known as "Bluetooth headsets" (hereinafter referred to as  
8 "Bluetooth Headsets" or the "Headsets"), which permit the use of a mobile phone  
9 without the necessity of holding the phone next to the face and without the necessity  
10 of wires connecting the phone to the Headset.

11 2. Bluetooth technology is a short-range wireless radio technology that  
12 allows electronic devices to connect to another. The term "Bluetooth" refers to a  
13 standardized wireless specification that was established in September 1998 by a trade  
14 association and has since been adopted by many electronics manufacturers in  
15 different industries. The first Bluetooth enabled mobile phone hit the market in  
16 2000. By 2001, each of the Defendants had Bluetooth enabled products on the  
17 market. Since then, use of Bluetooth Headsets has become increasingly popular  
18 among consumers because of the ease of use and convenience associated with the  
19 technology. Over 100 million Bluetooth Headsets have been sold since they first hit  
20 the market.

21 3. Each Headset is sold with affirmative representations that it may be used  
22 for extensive periods of time, however the product is sold without any warning as to  
23 its propensity to cause noise induced hearing loss, a condition that has no cure or  
24 treatment and which may result from normal use of the Headsets over time.

25 4. These Headsets produce sounds exceeding the identified danger zone of  
26 85 decibels, with sound often peaking in excess of 100 decibels. Exposure to sounds  
27 emitted from the Headsets at these decibel levels, may cause serious and permanent  
28 hearing loss over an extended period as herein below alleged. Thus, by design, the

1 Defendants have put consumers at risk of suffering serious hearing loss when the  
2 Headsets are put to their normal and intended use.

3 5. Millions of consumers have had their hearing put at risk by the  
4 Defendants' Headsets. Consumers have detrimentally relied upon the uniform  
5 affirmative misrepresentations, omissions, and concealments made by Defendants  
6 regarding the permissible use of their products. Consumers have further relied upon  
7 the Defendants' skill and judgment to furnish suitable goods, which would not cause  
8 harm to the consumer, and to warn the consumer of any information known by  
9 Defendants, or which should reasonably have been known by Defendants, relating to  
10 the safe operation of their products.

### 11 12 JURISDICTION AND VENUE

13 6. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(d)  
14 This is a putative class action involving more than 100 class members, at least one  
15 member of the putative class is a citizen of a state different from one defendant, and  
16 the aggregate amount in controversy exceeds \$5 million, exclusive of interest and  
17 costs.

18 7. Each defendant has conducted business in this District and is subject to  
19 personal jurisdiction. Accordingly, venue in this District is proper under 28 U.S.C. §  
20 1391.  
21

### 22 PARTIES

#### 23 A. Plaintiffs

24 8. Plaintiff Lori Raines is a resident of the County of Los Angeles,  
25 California who purchased a Bluetooth headset from Defendant Plantronics during the  
26 relevant time period. Plaintiff Raines brings this action on behalf of putative Sub-  
27 Class A, defined below.  
28

1           9. Plaintiff Betsee Finlee is a resident of Los Angeles County, California  
2 who purchased a Jabra-brand Bluetooth headset during the relevant time period.  
3 Plaintiff Finlee brings this action on behalf of putative Sub-Class B, defined below.

4           10. Plaintiff Michael Jones is a resident of Los Angeles County, California  
5 who purchased a Bluetooth headset from Defendant Motorola during the relevant  
6 time period. Plaintiff Jones brings this action on behalf of putative Sub-Class C,  
7 defined below.

8           11. Plaintiff Amy Karle is a resident of Los Angeles County, California who  
9 purchased a Bluetooth headset from Defendant Motorola during the relevant time  
10 period. Plaintiff Karle brings this action on behalf of putative Sub-Class C, defined  
11 below.

12           12. Plaintiff Evan Nass is a resident of Cook County, Illinois who purchased  
13 a Bluetooth headset from Defendant Motorola during the relevant time period.  
14 Plaintiff Nass brings this action on behalf of putative Sub-Class D, defined below.

15           13. Plaintiff Aleksandra Spevacek is a resident of Cook County, Illinois  
16 who purchased a Bluetooth headset from Defendant Motorola during the relevant  
17 time period. Plaintiff Spevacek brings this action on behalf of putative Sub-Class D,  
18 defined below.

19           14. Plaintiff Betty Dumas is a resident of the Eastern District of Texas who  
20 purchased a Bluetooth headset from Defendant Motorola during the relevant time  
21 period. Plaintiff Dumas brings this action on behalf of putative Sub-Class D, defined  
22 below.

23           15. Plaintiff Kimberly Ryan is a resident of Grant County, Kentucky who  
24 purchased a Bluetooth headset from Defendant Motorola during the relevant time  
25 period. Plaintiff Ryan brings this action on behalf of putative Sub-Class D, defined  
26 below.

27           **B. Defendants**

28           16. Defendant Plantronics, Inc. is a Delaware Corporation with its principal

1 place of business in California. Plantronics, Inc. maintains its corporate headquarters  
2 and principal executive offices in Santa Cruz, California. Plantronics employs  
3 engineering, marketing, information technology, finance, operations, quality  
4 assistance, and technical assistance personnel in its Santa Cruz headquarters.  
5 Plantronics is authorized to do business in California, has sufficient minimum  
6 contacts with California, and intentionally avails itself of the markets in California  
7 through the promotion, marketing and sale of its products in California, to render the  
8 exercise of jurisdiction by this Court permissible under traditional notions of fair play  
9 and substantial justice.

10 17. Defendant GN Netcom, Inc. manufactures, distributes, and markets  
11 Bluetooth Headsets sold under the "Jabra" brand. GN Netcom, Inc. is the successor  
12 in interest to Jabra Corporation, a San Diego, California based company that  
13 was purchased by GN Netcom's foreign parent company in 2000. GN Netcom, Inc.  
14 maintained its corporate headquarters and operations in San Diego, including  
15 engineering and marketing functions, up until at least May, 2004. Thereafter, GN  
16 Netcom moved its operations to Illinois, then again to its current offices in New  
17 Hampshire. As used herein, "Jabra" refers to GN Netcom, Inc. and all predecessor  
18 entities.

19 18. Defendant Motorola, Inc. is a Delaware Corporation with its principal  
20 place of business in Schaumburg, Illinois.

21 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

22 19. This action arises from Defendants' marketing, manufacture, and  
23 distribution of devices known as "Bluetooth Headsets" which permit wearers to  
24 utilize a mobile phone without holding the phone next to the face and without the  
25 necessity of wires connecting the phone to the Headset.

26 20. On the respective packaging of these Bluetooth Headsets, Defendants  
27 have made false representations, omissions and concealments to consumers in order  
28 to induce them to purchase the product. Each Headset is sold with affirmative

1 representations that it can be used for extensive time periods, and the packaging lacks  
2 any warnings regarding noise induced hearing loss, a condition which has no cure or  
3 treatment, which may result from use of the Headsets over time.

4 21. Use of Bluetooth Headsets is becoming increasingly popular among the  
5 consuming public because of the ease and convenience associated with the  
6 technology. According to the Insight Research Corporation ("IRC"), "[n]early 65  
7 percent of Americans, or 195 million people, are expected to be mobile phone  
8 subscribers by the close of 2005." See The Insight Research Corporation, *Fixed*  
9 *Mobile Convergence: Single Phone Solutions for Wireless, Wireline, and VoIP*  
10 *Convergence 2005-2011* (September 2005), available at <[http://www.insight-](http://www.insight-corp.com/reports/fixmobcon.asp)  
11 [corp.com/reports/fixmobcon.asp](http://www.insight-corp.com/reports/fixmobcon.asp)>. IRC has also reported that "[a]s users become  
12 more used to the convenience of cellular, long distance and local usage is shifting  
13 from wireline to cellular. The average wireline residential toll minutes of use  
14 ("MOUs") have been dropping at a compounded rate of 15 percent since 2000, while  
15 wireless interstate MOUs per user grew at a compounded rate of nearly 40 percent  
16 during the same period. According to one FCC study, on the wireless side, the  
17 percentage of interstate residential minutes has increased from 16 percent to 26  
18 percent of all wireless minutes." *Id.*

19 22. As more people switch from using landlines to using mobile phones in  
20 order to accommodate their telecommunication needs, more consumers are spending  
21 hours per day on the mobile phone.

22 23. As explained by the National Institute on Deafness and Other  
23 Communication Disorders ("NIDOC"), hearing depends on a series of events that  
24 change sound waves into electrical signals that the auditory nerve carries to the brain.  
25 Sound waves enter the outer ear and travel through the ear canal, which leads to the  
26 eardrum. The eardrum vibrates from incoming sound and then sends the vibrations  
27 to three bones in the middle ear, the malleus, incus and stapes. These bones then  
28 amplify the sound and send the vibrations to the inner ear, or cochlea. The vibrations

1 cause fluid inside the cochlea to ripple and travel in waves along the basilar  
2 membrane. Hair cells sit atop the basilar membrane. The motion causes bristles, or  
3 stereocilia, atop the hair cells to bump against another overlying membrane. As the  
4 bristles move, pore-like channels on their surface open, allowing chemicals that  
5 generate sound to rush in. The auditory nerve carries these signals to the brain,  
6 which translates it into sound recognizable by humans. See NIDOCDC, *Noise-Induced*  
7 *Hearing Loss* (May 2007), available at  
8 <[www.nidcd.nih.gov/health/hearing/noise.asp](http://www.nidcd.nih.gov/health/hearing/noise.asp)>

9 24. Noise induced hearing loss is the slow loss of hearing caused by unsafe  
10 levels of noise. Hearing loss happens when unsafe levels of noise hurt the hair cells  
11 in the inner ear. Noise induced hearing loss is nerve deafness which lasts forever.  
12 There is no treatment, no medicine, no surgery, and no device which can correct  
13 hearing once damaged by noise.

14 25. Plaintiffs are informed and believe that noise induced hearing loss can  
15 happen gradually over time and does not cause pain. Consequently, many people are  
16 unaware that noise induced hearing loss is occurring until it is too late. Because  
17 noise induced hearing loss is an insidiously developing hearing impairment, damage  
18 occurs prior to the point at which it is perceived.

19 26. Noise induced hearing loss can also result because an individual has  
20 become accustomed to a particular sound level. As the individual gradually suffers  
21 hearing loss, in an effort to compensate for the decrease in ability to hear, the  
22 individual unwittingly increases the volume of a device in order to hear the sound  
23 produced and thereby compounds the injury.

24 27. Dangerous Decibels, a public health partnership for the prevention of  
25 noise induced hearing loss, advises the public that "[a] dangerous sound is anything  
26 that is 85 dB (sound pressure level - SPL) or higher." See Dangerous Decibels,  
27 *Information Center: Hearing Loss* (June 22, 2007), available at  
28 [www.dangerousdecibels.org/hearingloss.cfm](http://www.dangerousdecibels.org/hearingloss.cfm). The organization further explains that:



1 [o]f the roughly 40 million Americans suffering from hearing loss, 10  
2 million can be attributed to noise-induced hearing loss (NIHL). NIHL  
3 can be caused by a one-time exposure to loud sound as well as by  
4 repeated exposure to sounds at various loudness levels over an extended  
5 period of time. *Id.*

6 28. Exposure to a time weighted average decibel level by itself can cause  
7 harm. Another reputable organization, the National Institute for Occupational Safety  
8 and Health (NIOSH), has offered the view that exposure to sound averaging at 85  
9 decibels for more than 8 hours is hazardous. See NIOSH, *Criteria for a*  
10 *Recommended Standard: Occupational Noise Exposure* (June 1998), available at  
11 [www.dangerousdecibels.org/hearingloss.cfm](http://www.dangerousdecibels.org/hearingloss.cfm). According to NIOSH, each three  
12 decibel volume increase reduces the safe exposure time by half, which reflects the  
13 logarithmic nature of the decibel scale. For example, if a headset set on the higher  
14 volume level produces decibel levels of 91 decibels, noise induced hearing loss  
15 statistically develops if the headset is used for more than two hours a day. At 94  
16 decibels, noise induced hearing loss statistically develops if the headset is used for  
17 more than one hour a day. At 103 decibels, irreversible damage statistically develops  
18 if the headset is used for more than 7 ½ minutes per day.

19 29. Defendants' Bluetooth Headsets produce sound directly into the ear  
20 canal exceeding 85 decibels, with sound often peaking in excess of 100 decibels. For  
21 example, in a test recently performed by the American Speech-Hearing-Language  
22 Association ("ASHLA"), Motorola's H700 Headset produced decibel levels of up to  
23 106 decibels. See ASHLA, *Popular Technology Unpopular with Ear's Hair Cells*  
(February 28, 2006), available at [www.asha.org/about/news/2006/techdamage.htm](http://www.asha.org/about/news/2006/techdamage.htm).

24 30. According to the standards promulgated by such organizations as  
25 NIOSH and Dangerous Decibels, a consumer statistically develops NIHL if exposed  
26 to sounds over 100 decibels for between only three to four minutes a day. However,  
27 Defendants have each marketed their Headsets as having talk times of multiple hours.

28 31. Bluetooth headsets have no mechanism that quantifies the noise output  
levels or signals when the decibel levels exceed safe ranges. Consequently, there is

1 no way for a consumer who wants to limit the noise output to a certain decibel level  
2 to do so reliably. That is, because of the products' design, a consumer cannot  
3 determine, without resorting to scientific testing, the decibel level of the sound being  
4 emitted from the Headset.

5 32. Because the Headsets transmit sound to only one ear, extraneous sound  
6 from the environment is simultaneously being heard by the Headset user from the  
7 other ear. Such ambient sound makes it difficult for the Headset user to isolate and  
8 hear the sound being transmitted over the Headset. The one ear design of the Headset  
9 thus requires the user to maximize the volume of the Headset in order to overcome  
10 the extraneous noise being heard in the other ear.

11 33. The in-ear or "ear bud" style Bluetooth Headsets that sit in the ear, as  
12 opposed to on the ear, are particularly dangerous to consumers because of their close  
13 proximity to the ear canal. Each of the defendants produces in-ear Bluetooth  
14 Headsets. Examples of these in-ear Bluetooth Headsets include Plantronic's  
15 Discovery 610, Jabra's BT250V, and Motorola's H9 Miniblue.

16 34. The Headsets can be used to listen to music or television downloaded  
17 onto mobile phones, including certain mobile phones manufactured and sold by  
18 Motorola. Because of these new uses for the mobile phone, the time over which the  
19 Headsets are used is increased significantly.

20 35. Other manufacturers of music listening devices, such as Apple with  
21 respect to its iPod, include a warning so that consumers are aware of the potential for  
22 hearing damage. For example, the iPod is sold with the following warning:

23  
24 Avoid Hearing Damage Warning: Permanent hearing loss may occur if  
25 earphones or headphones are used at high volume. You can adapt over  
26 time to a higher volume of sound, which may sound normal but can be  
27 damaging to your hearing. Set your iPod's volume to a safe level before  
28 that happens. If you experience ringing in your ears, reduce the volume  
or discontinue use of your iPod.

1 The Headsets manufactured, distributed and sold by Defendants contain no such  
2 warnings regarding the actual and avoidable risks of hearing loss associated with the  
3 use of the Headsets, and thus fail to follow industry standards for music listening  
4 devices.

5 36. Plaintiffs each have purchased and used Headsets manufactured and  
6 distributed by one of the Defendants. None of the Plaintiffs were aware that the  
7 Headsets were emitting sounds in excess of safe decibel levels.

8 37. Defendants' misrepresentations about the time that headsets can be used,  
9 and the absence of warnings of the risk of noise induced hearing loss, substantially  
10 influenced Plaintiffs' decision to purchase Bluetooth Headsets from Defendants.

11 38. The design, manufacture, distribution and sale by Defendants of the  
12 Headsets without adequate warning labels that the Headsets produce decibel levels  
13 harmful to the human ear constitutes deceptive and unlawful business practices. As a  
14 result of Defendants' conduct, numerous consumers have paid for an unsafe or  
15 unusable product which they falsely were led to believe could be safely used for  
16 extended periods of time.

17 39. Millions of consumers have had their hearing put at risk by Defendants'  
18 conduct. Plaintiffs and the Class members detrimentally relied upon the affirmative  
19 misrepresentations, omissions and concealments made by Defendants regarding the  
20 permissible use of the product. Plaintiffs and the Class members further relied upon  
21 Defendants' skill and judgment to furnish suitable goods which would not cause harm  
22 to the consumer, and to warn the consumer of any information known by Defendants,  
23 or which should reasonably have been known by Defendants, relating to the safe  
24 operation of the product.

25 40. Plaintiffs seek damages, on behalf of themselves and the Classes as  
26 defined below, injunctive relief, product repair, restitution, disgorgement, and all  
27 other appropriate relief. Defendants misrepresented the time period over which  
28 consumers could safely use the Headsets. In marketing and advertising the Headsets,

1 Defendants concealed and omitted material information as to the capacity for the  
2 headsets to cause hearing loss. Plaintiffs and the members of the classes thus: (1)  
3 cannot safely use the Headsets for the length of time for which the Headsets were  
4 advertised as usable; or (2) must turn the volume of the Headsets so low as to render  
5 the headsets unusable in most environments, thereby drastically limiting and/or  
6 eliminating the usability of the product.

7 41. Since learning of the problems with the product as described herein,  
8 each of the Plaintiffs have each stopped using the Headsets completely, or have  
9 limited their use of the Headsets. Plaintiffs, and the Class Members, have thus lost  
10 money as a result of the wrongful acts of Defendants.

#### 11 **PLANTRONICS' WRONGFUL CONDUCT**

12 42. Plantronics has manufactured and distributed many different models of  
13 Bluetooth Headsets including Discovery 655, Discovery 645, Discovery 640,  
14 Discovery 640E, Voyager 510, Explorer 350, Explorer 340, and Explorer 330  
15 (hereinafter "Plantronics Headsets"). On the packaging of the Plantronics Headsets,  
16 Plantronics has made false representations, omissions and concealments to  
17 purchasing consumers in order to induce the consumers to purchase the product.  
18 Each Plantronics Headset is sold with affirmative representations that it can be used  
19 for extensive time periods, yet the packaging lacks any warnings regarding the noise  
20 induced hearing loss, a condition which has no cure or treatment, which can be  
21 expected to result from use of the Plantronics Headsets in most environments over  
22 that period of time.

23 43. The packaging on the Plantronics Headsets advises that the Headsets can  
24 be used for "extended talk time." The various models indicate talk time of 3 hours, 6  
25 hours, 8 hours, 9 hours, 10 hours, and even 15 hours. However, the representations  
26 as to permissible talk times are false, as a consumer cannot safely use the Plantronics  
27 Headsets for the talk times represented. Plaintiffs and the Class members relied upon  
28 these representations made by Defendants in determining whether to purchase the

1 Plantronics Headsets at the high price charged for the devices.

2 44. Plantronics sold the Plantronics Headsets with a booklet setting forth  
3 "important safety and operational information" relating to use of the Plantronics  
4 Headsets. However, Plantronics omitted and concealed from consumers any safety  
5 information pertaining to the Headsets' propensity for causing noise induced hearing  
6 loss. Defendants also omitted and concealed from the consuming public information  
7 advising that the Headsets produced noise at decibel levels exceeding 85 db, and even  
8 exceeding 100 db.

9 45. Despite the information provided by Plantronics in its "safety booklet,"  
10 Plantronics fails to divulge the decibel output of the device and the potential for noise  
11 induced hearing loss if the Headset is used at a loud setting for more than a safe  
12 number of hours per day. The exclusion of such information from the safety  
13 information in the booklet wrongly implies that the Headset is safe at its maximum  
14 volume for the hours of talk time permitted by the Headset. The safety book falsely  
15 represents to consumers that the "important" information provided in the booklet  
16 permits the "safe and efficient operation" of the Headset. This representation is false,  
17 as important safety information has been excluded from the booklet.

18 46. Plantronics affirmatively represented that the Headsets are warranted to  
19 be free from "defects in materials and workmanship." This representation was and is  
20 false. The Headsets are defective and cannot safely be used for their intended  
21 purpose. The materials and workmanship of the product cause the product to  
22 produce unsafe decibel levels under normal consumer usage.

23 47. Plaintiffs and the Class members relied upon such misrepresentations,  
24 omissions and concealments to their detriment in that the Defendants'  
25 misrepresentations and concealments to the effect that the Headsets were safe for  
26 their normal and intended use substantially influenced Plaintiffs' choice to buy and  
27 utilize Defendants' Bluetooth Headsets.

28

**JABRA'S WRONGFUL CONDUCT**

48. GN Jabra North America and GN Netcom, Inc. (hereinafter referred to as the "Jabra" Defendants") have manufactured and distributed many different models of Bluetooth Headsets, including the JX10, BT160, BT500, BT800, BT250v, BT350, and BT150 (hereinafter referred to as the "Jabra Headsets").

49. On the packaging and marketing materials for these Headsets, Defendants have made false representations, omissions and concealments to purchasing consumers in order to induce the consumers to purchase the product. Each Headset is sold with affirmative representations that it can be used for extensive time periods, yet the packaging lacks any warnings regarding the noise induced hearing loss, a condition which has no cure or treatment, which can be expected to result from use of the Headsets in most environments over that period of time.

50. The packaging on the Jabra Headsets advises that the Jabra Headsets can be used for an extensive amount of talk time. The various models indicate talk time of 6 hours, 8 hours, 7 hours, and even 10 hours. However, the representations as to permissible talk times are false, as a consumer cannot safely use the Jabra Headsets for the talk times represented. Plaintiffs and the Class members relied upon these representations made by Defendants in determining whether to purchase the Headsets at the high price charged for the devices.

51. Although Jabra provides a user manual with its Headsets, which includes a section entitled "Certification and Safety Approvals," Jabra omits from the manual any information as to the decibel output of the device and the potential for noise induced hearing loss if the Headset is used at a loud setting for more than a safe number of hours per day. The exclusion of such information from the user manual wrongly implies that the Headset is safe at its maximum volume for the hours of talk time permitted by the Headset.

52. The same misrepresentations, omissions and concealments were made in the product packaging to each consumer who purchased a Jabra Headset. Plaintiffs



1 and the Class members relied upon the misrepresentations, omissions and  
2 concealments in purchasing the Headsets in that the Defendants' misrepresentations  
3 and concealments to the effect that the Headsets were safe for their normal and  
4 intended use substantially influenced Plaintiffs' choice to buy and utilize Defendants'  
5 Bluetooth Headsets.

#### 6 **MOTOROLA'S WRONGFUL CONDUCT**

7 53. Motorola has manufactured and distributed many different models of  
8 Bluetooth headsets, including the HS830, H3, H300, H500, H605, H700, HS805,  
9 HS815, HS820, HS850, and HT820 (hereinafter referred to as the "Motorola  
10 Headsets").

11 54. The packaging on the Motorola Headsets advises that the Headsets can  
12 be used for hours of talk time. The various models advertise on the front of the  
13 packaging that the product permits talk time of 3.5 hours, 6 hours, 8 hours, 10 hours,  
14 and even 17 hours. However, the representations as to permissible talk times are  
15 false because a consumer cannot safely use the Headsets for the talk times  
16 represented. Rather, the Motorola Headsets can only be safely used for minutes per  
17 day, thereby drastically limiting the usability of the product.

18 55. Plaintiffs and the Class members relied upon these representations made  
19 by Defendants in determining whether to purchase the Headsets at the high price  
20 charged for the devices (with some versions costing over \$100.00). Had Plaintiffs  
21 been advised that the product could only safely be used for mere minutes per day,  
22 Plaintiffs would not have purchased the Motorola Headsets for the prices charged, or  
23 at all.

24 56. Motorola sold the Motorola Headsets with a booklet setting forth safety  
25 information relating to use of the Headsets. However, Defendants omitted and  
26 concealed from consumers any safety information pertaining to the Headsets'  
27 propensity for causing noise induced hearing loss. Defendants also omitted and  
28 concealed from the consuming public information advising that the Headsets

1 produced noise at decibel levels exceeding 85 decibels, and even exceeding 100  
2 decibels.

3 57. Motorola manufactures and sells the Motorola Headsets without any  
4 warning as to the decibel levels the devices emit. Motorola sells its headsets with a  
5 booklet entitled "Important Safety and Legal Information." The booklet informs the  
6 consumer in bold print that it provides **"IMPORTANT INFORMATION ON**  
7 **SAFE AND EFFICIENT OPERATION. READ THIS INFORMATION**  
8 **BEFORE USING YOUR DEVICE."** The booklet contains three pages of "Safety  
9 Information." The booklet also includes a four page section on "Wireless Phone  
10 Safety Tips."

11 58. Despite the seven pages of material devoted to the safe use of the  
12 Motorola Headset, Motorola fails to divulge the decibel output of the device and the  
13 potential for noise induced hearing loss if the Headset is used at a loud setting for  
14 more than a safe number of hours per day. The exclusion of such information from  
15 the safety information and tips in the booklet wrongly implies that the Headset is safe  
16 at its maximum volume for the hours of talk time permitted by the Headset. The  
17 safety book falsely represents to consumers that the "important" information provided  
18 in the booklet permits the "safe and efficient operation" of the Headset. This  
19 representation is false since important safety information has been excluded from the  
20 booklet. Plaintiffs and the Class members relied upon such misrepresentations,  
21 *omissions and concealments to their detriment.*

22 59. Motorola affirmatively represented in their marketing materials that the  
23 Headsets are "free from defects in materials and workmanship under normal  
24 consumer usage. . . ." This representation was and is false. The Headsets are  
25 defective and cannot safely be used for their intended purpose. The materials and  
26 workmanship of the product cause the product to produce unsafe decibel levels under  
27 normal consumer usage.

28 60. The same misrepresentations, omissions and concealments were made in



1 the product packaging to each consumer who purchased a Motorola Headset.  
 2 Plaintiffs and the Class members relied upon the misrepresentations, omissions and  
 3 concealments in purchasing the Headsets in that the Defendants' misrepresentations  
 4 and concealments to the effect that the Headsets were safe for their normal and  
 5 intended use substantially influenced Plaintiffs' choice to buy and utilize Defendants'  
 6 Bluetooth Headsets.

### 7 CLASS ACTION ALLEGATIONS

8 61. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs  
 9 bring these consolidated actions on behalf of themselves and the following sub-  
 10 classes:

11 a. Plaintiff Sub-Class A: Nationwide Sub-Class Against  
 12 Defendant Plantronics.

13 All persons or entities in the United States who, between June 30, 2002 and  
 14 the present, purchased a Bluetooth Headset manufactured by Defendant Plantronics.  
 15 The class does not include: (a) any officers, directors or employees of the  
 16 Defendants; (b) any judge assigned to hear this case (or spouse or family member of  
 17 any assigned judge); (c) any juror selected to hear this case.

18 b. Plaintiff Sub-Class B: "Nationwide Sub-class Against  
 19 the Jabra Defendants.

20 All persons and entities in the United States who, between June 30, 2002 and  
 21 the present, purchased a Bluetooth Headset manufactured by Defendant GN Jabra  
 22 North America or GN Netcom, Inc. or their successors in interest. The class does  
 23 not include: (a) any officers, directors or employees of the Defendants; (b) any judge  
 24 assigned to hear this case (or spouse or family member of any assigned judge); (c)  
 25 any juror selected to hear this case.

26 c. Plaintiff Sub-Class C: California Class Against  
 27 Defendant Motorola

28 All persons or entities who reside in California and who, between June 30,

1 2002 and the present, purchased a Bluetooth Headset manufactured by Defendant  
2 Motorola. The class does not include: (a) any officers, directors or employees of the  
3 Defendants; (b) any judge assigned to hear this case (or spouse or family member of  
4 any assigned judge); (c) any juror selected to hear this case.

5 d. Plaintiff Sub-Class D: Forty-Nine State Sub-class Against Defendant  
6 Motorola

7 All persons and entities who reside in the United States but outside California,  
8 and who, between October 16, 2003 and the present, purchased a Bluetooth Headset  
9 device manufactured by Defendant Motorola. The class does not include: (a) any  
10 officers, directors or employees of the Defendants; (b) any judge assigned to hear this  
11 case (or spouse or family member of any assigned judge); (c) any juror selected to  
12 hear this case.

13 Said definitions may be further defined by additional pleadings, evidentiary  
14 hearings, a class certification hearing, and order of this Court.

15 62. This action has been brought and may be properly maintained as a class  
16 action pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following  
17 reasons:

- 18 a. Each defendant has sold millions of Bluetooth Headsets during the  
19 relevant time period. Therefore, joinder of all Class members in their  
20 respective state classes would be impracticable, and class treatment is a  
21 superior method for fairly and efficiently adjudicating this controversy.
- 22 b. Plaintiffs' claims are typical of other Class members' claims within their  
23 respective classes because each Plaintiff purchased one or more  
24 Bluetooth Headsets manufactured, sold, marketed or distributed by  
25 Defendants within the class period. Each of the Defendants made  
26 uniform misrepresentations, omissions, concealment to the Plaintiffs  
27 and respective Class members who purchased their Headsets.  
28 Accordingly, by proving their own claims, Plaintiffs will presumptively

1 prove their respective Class members' claims.

2 c. Numerous questions of law and fact are uniform and common to the  
3 classes. These uniform and common questions of law and fact  
4 predominate over any individual issues. The uniform and common  
5 questions of law and fact which predominate over individual issues  
6 include:

7 i. Whether Defendants, and each of them, represented to consumers  
8 that the Bluetooth Headsets had a characteristic, use, benefit, or  
9 quality that permitted the consumer to safely use the headsets for  
10 an extended amount of time;

11 ii. Whether the Headsets in fact have a characteristic, use, benefit, or  
12 quality that prevents a consumer from safely using the Bluetooth  
13 Headsets for an extended amount of time;

14 iii. Whether use of the Bluetooth Headsets expose users to  
15 dangerous levels of sound;

16 iv. Whether Defendants, and each of them, failed to fairly,  
17 accurately, and sufficiently warn Plaintiffs and the members of  
18 the proposed Classes of the unsafe characteristics of the  
19 Bluetooth Headsets;

20 v. Whether Defendants, and each of them, knowingly concealed  
21 the danger of using the Bluetooth Headsets;

22 vi. Whether Defendants, and each of them, truthfully advertised that  
23 the Bluetooth Headsets could safely be used over multiple hours  
24 of time;

25 vii. Whether Defendants, and each of them, violated express and  
26 implied warranty statutes;

27 viii. Whether Defendants, and each of them, were unjustly  
28 enriched;

ix. The nature and extent of damages to which Plaintiffs and members of the proposed classes are entitled based on the conduct of Defendants;

x. Whether the distribution of Bluetooth Headsets to the consuming public constitutes an illegal nuisance.

xi. Whether Defendants' Bluetooth Headsets pose an excessive risk of otherwise preventable hearing loss.

xii. Whether Defendants knew or should have known that their Bluetooth Headsets pose an excessive risk of otherwise preventable hearing loss.

xiii. Whether Defendants should be ordered to notify all class members of the risk of hearing loss associated with their Bluetooth Headsets.

d. Plaintiffs can and will fairly and adequately represent and protect their respective Class members' interests, and have no interests that conflict with or are antagonistic to their respective Class members' interests. Plaintiffs' attorneys are experienced and competent in complex class-action and consumer-protection antitrust litigation.

e. Defendants each engaged in a course of conduct involving similar or identical unsafe designs, statutory violations, and misrepresentations common to Plaintiffs and the members of their respective classes. Individual questions, if any, pale by comparison to the numerous common questions that dominate this litigation.

f. The claims at issue herein seek damages for economic injury and do not seek damages for physical injury which has already occurred to the Class members. Specifically excluded from the relief sought in this proceeding are damages for personal injury claims. Thus,

1 individualized determination as to causation related to bodily injury  
2 already suffered will not be required. The economic damages sustained  
3 by the members of the classes arise from a common nucleus of operative  
4 facts involving the respective Defendant's misconduct.

5 g. These class actions are superior to the alternatives, if any, for the fair  
6 and efficient adjudication of these controversies. The Classes are  
7 readily definable. Certification of these class actions will enable  
8 claims to be handled in an orderly and expeditious manner.  
9 Certification of these class actions will save time and expense and  
10 will ensure uniformity of decisions.

11 h. The relief sought per individual member of the Class is small given  
12 the burden and expense of individual prosecution of the potentially  
13 extensive litigation necessitated by the conduct of Defendants.  
14 Furthermore, it would be virtually impossible for the Class members  
15 to seek redress on an individual basis. Even if the Class members  
16 themselves could afford such individual litigation, the court system  
17 could not.

18 i. The members of the proposed classes have been monetarily damaged  
19 and suffered injury in fact as a result of Defendants' misconduct in  
20 that each member purchased a Headset which the member would not  
21 have purchased if the true facts as to the product's safety and  
22 limitations had been revealed by Defendants.

23 j. Individual litigation of the legal and factual issues raised by the  
24 conduct of Defendants would increase delay and expense to all parties  
25 and to the court system. The class action device presents far fewer  
26 management difficulties and provides the benefits of a single, uniform  
27 adjudication, economies of scale and comprehensive supervision by a  
28 single court. Given the similar nature of the Class members' claims

1 and the law applicable thereto, the Court and the parties will easily be  
2 able to manage the class actions in this MDL.

3 k. Prosecution of separate actions by individual Class members will  
4 create the risk of inconsistent or varying adjudications, establishing  
5 incompatible standards of conduct for the Defendants.

6 l. Injunctive relief is appropriate as to each of the Classes as a whole  
7 because Defendants have acted or refused to act on grounds generally  
8 applicable to the Classes.

9 63. Application of California law to the putative nationwide Sub-Class A is  
10 proper because defendant Plantronics markets, advertises and sells its Bluetooth  
11 Headsets in and from the State of California. Thus, a substantial portion of the  
12 alleged wrongful conduct emanates from this state. In addition, California's public  
13 policy favors the protection of consumers, and California has a strong interest in  
14 deterring wrongful conduct that occurs within its borders. Thus, application of  
15 California law is not arbitrary or unfair as it relates to Sub-Class A.

16 64. Application of California law to the putative nationwide Sub-Class B is  
17 proper because the Jabra defendants marketed, advertised, and sold their Bluetooth  
18 Headsets in and from the State of California. Thus, a substantial portion of the  
19 alleged wrongful conduct emanates from this state. In addition, California's public  
20 policy favors the protection of consumers, and California has a strong interest in  
21 deterring wrongful conduct that occurs within its borders. Thus, application of  
22 California law is not arbitrary or unfair as it relates to Sub-Class B.

23 65. Application of California law to the putative California Sub-Class C is  
24 proper because defendant Motorola conducts business in this state and has purposely  
25 availed itself to the markets in this state by promoting, marketing, and selling its  
26 Bluetooth Headsets in California. All the members of the putative Sub-Class C are,  
27 by definition, residents of California. California's public policy favors the protection  
28 of consumers, and California has a strong interest in protecting its citizens from

1 wrongful conduct.

2 66. Application of Illinois law to the putative Sub-Class D is proper because  
3 defendant Motorola markets, advertises and sells its Bluetooth Headsets in and from  
4 the State of Illinois. Thus, a substantial portion of the alleged wrongful conduct  
5 emanates from Illinois, and Illinois has a strong interest in deterring wrongful  
6 conduct that occurs within its borders.

7 **FIRST CAUSE OF ACTION**

8 **Violation of Consumers Legal Remedies Act, Cal Civ. Code § 1750 et seq.**  
9 ***(Brought on Behalf of Sub-Classes A, B, and C)***

10 67. Plaintiffs incorporate by reference all the above allegations as if fully set  
11 forth herein.

12 68. Plaintiffs and members of Sub-Classes A, B, and C are individuals who  
13 have purchased goods (i.e. Bluetooth Headsets) for personal, family or household  
14 purposes. This cause of action is being asserted on behalf of all persons who  
15 purchased a Bluetooth Headset within three years of the filing of this action.

16 69. Defendants have represented that the Bluetooth Headsets have  
17 characteristics, uses, benefits, or qualities that they do not have, in violation of Civil  
18 Code § 1770(a)(5). Defendants have also represented that the Bluetooth Headsets  
19 had a particular standard or quality that they do not have in violation of Civil Code §  
20 1770(a)(7).

21 70. Plaintiffs and members of the Classes have each been directly and  
22 proximately injured by the conduct of Defendants, and such injury includes payment  
23 for the unsafe Bluetooth Headsets.

24 71. More than (30) thirty days prior to the filing of this complaint, notice  
25 was sent to each Defendant in writing by certified mail pursuant to California Civil  
26 Code § 1782(a), in which demand was made that Defendants correct their unfair and  
27 deceptive acts, recall the product, contact and refund to Plaintiffs and the Classes the  
28 purchase price, and otherwise rectify its conduct with respect to the product. Notice



1 was also given to Defendants by virtue of complaints and amended complaints filed  
2 in *Jones, et al. v. Motorola, Inc., et al.*, Case No. 2:06-5182, United States District  
3 Court, Central District of California; *Finlee v. GN Jabra North America, et al.*, Case  
4 No. 2:06-6280, United States District Court, Central District of California, *Karle v.*  
5 *Motorola, Inc.*, Case No. 2:06-6706, United States District Court, Central District of  
6 California, *Raines v. Plantronics, Inc.*, Case No. 2:06-7608, United States District  
7 Court, Central District of California.

8 72. Defendants have failed to make an appropriate correction, repair or  
9 replacement, or other remedy with respect to the product.

10 73. Defendants have failed to make an appropriate correction, repair or  
11 replacement, or other remedy with respect to the product.

12 74. As a result of the conduct of Defendants as alleged herein, Plaintiffs and  
13 the Class should be awarded actual damages in the amount paid for the product, and  
14 restitution pursuant to California Code § 1780(a).

15 75. The Court should enjoin Defendants from any further sales, marketing  
16 or advertisement of the Bluetooth Headsets which contain the misrepresentation  
17 detailed herein as to the standard, characteristics, uses, benefits, and/or qualities of  
18 the Bluetooth Headsets. The Court should enjoin Defendants from any further sales,  
19 marketing or advertisement of the Bluetooth Headsets without a warning as to the  
20 potential for noise induced hearing loss. The Court should further enjoin Defendants  
21 from any further sales, marketing or advertisement of the Bluetooth Headsets until  
22 Defendants redesign the Bluetooth Headsets in a manner that ensures that the volume  
23 emitted by the Bluetooth Headsets does not exceed the decibel level determined to be  
24 safe for the advertised use of the Headsets, or alternatively, redesign the Bluetooth  
25 Headsets in a manner that provides the consumer with the ability to determine the  
26 decibel level of the sound being emitted by the Bluetooth Headset.

27 76. Plaintiffs engaged counsel to prosecute this action and are entitled to  
28 recover costs and reasonable attorney's fees according to proof at trial.



**SECOND CAUSE OF ACTION****Untrue and Misleading Advertising, Cal. Bus. & Prof. Code § 17500, et seq.  
(Brought on Behalf of Sub-Classes A, B, and C)**

77. Plaintiffs incorporate by reference all the above allegations as if fully set forth herein.

78. Plaintiffs bring this cause of action on behalf of themselves, and on behalf of Sub-Classes A, B, and C. Plaintiffs have suffered injury in fact and lost money or property as a result of Defendants' violations of Bus. & Prof. Code § 17500, *et seq.* Plaintiffs relied on the concealments and misrepresentations of the Defendants in purchasing the Headsets. The Defendants' misrepresentations and concealments to the effect that the Headsets were safe for their normal and intended use substantially influenced Plaintiffs' choice to purchase Defendants' Bluetooth Headsets.

79. Plaintiffs are informed and believe that Defendants made representations disseminated to the public as to the uses of the Headsets in advertisements, product descriptions and other sales materials, while also concealing and/or omitting relevant information which would have qualified such affirmative representations. These representations and concealments were made to induce the public to purchase the Headsets. The representations were false. The information concealed should have been disseminated.

80. Defendants were aware, or by the exercise of reasonable care should have been aware, that the representations were untrue or misleading. Defendants also were aware, or by the exercise of reasonable care should have been aware, that the concealments and omissions should have been disseminated in the advertising.

81. Plaintiffs have been harmed. Plaintiffs, on behalf of themselves and on behalf of the Sub-Classes, seeks restitution, injunctive relief and all other relief allowable under § 17500, *et seq.*

82. Pursuant to Bus. & Prof Code § 17535, Plaintiffs and members of the

1 Sub-Classes are entitled to remedies as set forth below.

2 83. Plaintiffs meet the standing requirements of California Code of Civil  
3 Procedure § 382 to bring this cause of action because, among other reasons,  
4 the question is one of a common or general interest, is a question of many persons  
5 and/or the parties are numerous and it is impracticable to bring them all before the  
6 Court.

7 **THIRD CAUSE OF ACTION**

8 **Violation of Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.***  
9 ***(Brought on Behalf of Sub-Classes A, B, and C)***

10 84. Plaintiffs incorporate by reference all the above allegations as if fully set  
11 forth herein.

12 85. Plaintiffs bring this cause of action on behalf of themselves and on  
13 behalf of Sub-Classes A, B, and C. Plaintiffs have suffered injury in fact and lost  
14 money or property as a result of unfair competition by Defendants, as Plaintiffs paid  
15 the purchase price for an unsafe product which probably would not have been  
16 purchased, or purchased for the same price, if Defendants had not made  
17 misrepresentations and concealed or omitted material information as to the safety of  
18 the product and its limitations. Plaintiffs relied upon Defendants to disclose all  
19 pertinent safety information and the limitations on the safe usage of the product.  
20 Plaintiffs have further suffered injury in fact having been subjected to a nuisance, as  
21 defined by California Civil Code, section 3479, and as to which they were subjected  
22 by virtue of money innocently paid in purchasing a product injurious to health so as  
23 to interfere with the comfortable enjoyment of life.

24 86. The actions of Defendants, as complained herein, constitute unfair,  
25 deceptive and unlawful practices committed in violation of the Unfair Competition  
26 Act. Plaintiffs are informed and believe that the conduct of Defendants violated the  
27 Unfair Competition Act because:

28 a. Defendants were aware, or upon reasonable investigation should

1 have been aware, of the risks presented by the use of the  
2 Headsets;

3 b. Defendants purposefully and knowingly failed to adequately  
4 warn the consumer of the safety risk presented by use of the  
5 Headset;

6 c. Defendants advertised and marketed the Headsets with a  
7 representation that the Headsets could be used in excess of the  
8 number of hours which would be safe, even though Defendants  
9 were aware or should have been aware that such use could be  
10 unsafe;

11 d. Defendants failed to include in the safety information provided  
12 with the Headsets any mention of the potential for noise  
13 induced hearing loss, even though such a warning had been  
14 issued by competitors;

15  
16 e. Defendants concealed, omitted and/or suppressed information as  
17 to the decibel levels emitted by the Headsets and the  
18 corresponding time limitations for use;

19 f. Defendants have unlawfully violated regulations limiting  
20 exposure to certain decibel levels over certain periods of time;

21 87. Plaintiffs are informed and believe that Defendants are aware, or should  
22 be aware, of the risk of hearing loss posed by the Headsets, but Defendants chose to  
23 market and sell the Headsets without adequate warning or modifications because  
24 such warnings or modifications could have had an adverse impact on the sale of the  
25 Headsets and the revenue flowing to Defendants.

26 88. Plaintiffs have suffered damages as a result of the conduct of  
27 Defendants, because Plaintiffs and the Class members were misled into purchasing a  
28 product which was not safe and which was not what Defendants advertised the

1 product to be.

2 89. Plaintiffs are informed and believe that all of the conduct alleged herein  
3 occurs and continues to occur in Defendants' business. The conduct of Defendants is  
4 part of a pattern or generalized course of conduct repeated on thousands of occasions  
5 daily.

6 90. Plaintiffs request that this Court enter such orders or judgments as may  
7 be necessary to restore to any person in interest any money which may have been  
8 acquired by means of such unfair practices as provided in Bus. & Prof. Code §  
9 17203, and for such other relief as set forth below.

10 91. Plaintiffs are informed and believe that the continuing sales of the  
11 Headsets to the unsuspecting public, without warnings and any mechanism by which  
12 the public may protect its hearing, exposes the consuming public in an ongoing  
13 danger of noise induced hearing loss, an irreparable and devastating loss. Because  
14 the noise induced hearing loss at issue herein is a silent condition (i.e., one is unaware  
15 that it is occurring as it evolves and until it is too late) that progressively occurs over  
16 time, everyday the consuming public uses the product, consumers continue down the  
17 path of noise induced hearing loss, incrementally but permanently affecting and/or  
18 jeopardizing one's long-term ability to hear. With every additional sale of the  
19 product, this path becomes increasingly congested.

20 92. Plaintiffs, on behalf of themselves, and Sub-Classes A, B, and C seek an  
21 order of this Court awarding restitution, injunctive relief and all other relief allowed  
22 under § 17200, *et seq.*, plus interest, attorneys' fees and costs pursuant to, *inter alia*,  
23 C.C.P. § 1021.5. Plaintiffs engaged counsel to prosecute this action and are entitled  
24 to recover costs and reasonable attorney's fees according to proof at trial. This case  
25 will result in the enforcement of an important right affecting the public interest, a  
26 significant benefit (pecuniary or nonpecuniary) will be conferred on a large class of  
27 persons (thousands if not tens of thousands or more), the necessity and financial  
28 burden of private enforcement are such as to make the award appropriate (the product

1 costs less than \$200, which is minimal in comparison to the financial burden of  
2 litigating this important action, made necessary by virtue of Defendants' refusal to  
3 protect the public's hearing); and such fees should not in the interest of justice be paid  
4 out of the recovery, if any (as the cost of litigation by itself may exceed the monetary  
5 amounts paid by way of restitution).

6 93. Plaintiffs meet the standing requirements of California Code of Civil  
7 Procedure § 382 to bring this cause of action because, among other reasons, the  
8 question is one of a common or general interest, is a question of many persons and/or  
9 the parties are numerous and it is impracticable to bring them all before the Court.  
10 Further, Plaintiffs have standing to bring this action as Plaintiffs suffered injury in  
11 fact and damages as a result of Defendants' conduct.

#### 12 **FOURTH CAUSE OF ACTION**

##### 13 **Deceptive Trade Practices 815 ILCS 510**

14 ***(Brought on Behalf of Sub-Class D Against Motorola, Inc.)***

15 94. Plaintiffs incorporate by reference all the above allegations as if fully set  
16 forth herein.

17 95. Plaintiffs bring this cause of action on behalf of themselves, on behalf of  
18 the Class, and on behalf of the common or general interest. Plaintiffs have suffered  
19 injury in fact and lost money or property as a result of Defendant's violations of the  
20 Uniform Deceptive Trade Practices Act 815 Ill. Comp. Stat. 510.

21 96. Plaintiffs are informed and believe that Defendant has made  
22 representations to the public that regarding the uses and quality of the Headsets.  
23 These representations were made to induce the public to purchase the Headsets. The  
24 representations were false and created a likelihood of confusion or misunderstanding  
25 among the Plaintiffs and the public.

26 97. Defendant was aware, or by the exercise of reasonable care should have  
27 been aware, that the representations were untrue and misleading. Defendants also  
28

1 were aware, or by the exercise of reasonable care should have been aware, that the  
2 concealments and omissions should have been disseminated in the advertising.

3 98. Plaintiffs have been harmed. Plaintiffs, on behalf of themselves, on  
4 behalf of the Class, and on behalf of the common or general interest, seek restitution  
5 and all other relief allowable under Uniform Deceptive Trade Practices Act 815 Ill.  
6 Comp. Stat. 510.

7  
8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiffs, on behalf of themselves and as representative  
10 of all other persons similarly situated, pray for judgment against the Defendants,  
11 as follows:

- 12 1. An Order certifying the Sub-Classes herein, and appointing Plaintiffs,  
13 and their counsel, to represent the Class;
- 14 2. An award of general damages according to proof;
- 15 3. An award of special damages according to proof;
- 16 4. An award of punitive damages in an amount sufficient to deter and make  
17 an example of Defendants;
- 18 5. An award of restitution in an amount according to proof;
- 19 6. A temporary restraining order, a preliminary injunction and a  
20 permanent injunction enjoining Defendants, and their agents, servants,  
21 employees and all persons acting under or in concert with them, to cease  
22 and desist from the following acts:
  - 23 (a) Selling, marketing or advertising the Headsets without a detailed  
24 warning advising the consumer as to the potential for noise  
25 induced hearing loss and the known risk of harm associated with  
26 exposure, even for brief intervals, to sound at high decibel levels;
  - 27 (b) Selling, marketing or advertising the Headsets without a  
28 mechanism by which the user can readily and easily determine

1 the decibel levels being emitted by the Headsets and thereby be  
2 made aware of the safe time limits (if any) for use of the Headsets  
3 at the higher volume settings;

4 (c) Any other conduct which the Court determines warranted so as to  
5 prevent the commission of unfair competition by Defendants.

6 7. For reasonable attorneys' fees;

7 8. For costs incurred herein;

8 9. For prejudgment interest;

9 10. For an order of disgorgement;

10 11. For all general, special, and equitable relief to which the Plaintiffs and  
11 the members of the Class are entitled by law.

12  
13 Dated: July 6, 2007

**THE GARCIA LAW FIRM  
PEARSON, SIMON, SOTER, WARSHAW  
& PENNY LLP**

14  
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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury.

Dated: July 6, 2007

**THE GARCIA LAW FIRM  
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